

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20880

Application 29614 of Andrea L. Bartolucci

5400 Old Sonoma Road, Napa, CA 94558

filed on November 10, 1989, has been approved by the State Water Resources Control Board
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

1) Unnamed Stream

Huichica Creek thence

2) Huichica Creek

Hudeman Slough thence

Second Napa Slough thence

Sonoma Creek thence

San Pablo Bay

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section *	Township	Range	Base and Meridian
<u>MADONNA RESERVOIR</u> North 205,600 feet and East 1,897,000 feet	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	36	5N	5W	MD
<u>DIVERSION TO OFFSTREAM STORAGE</u> North 205,650 feet and East 1,898,200 feet	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	36	5N	5W	MD
Both by California Coordinate System, Zone 2					

County of Napa

* projected

3. Purpose of use:	4. Place of use:	Section *	Township	Range	Base and Meridian	Acres
Stockwater	AT MADONNA RESERVOIR WITHIN SW $\frac{1}{4}$ of SE $\frac{1}{4}$	36	5N	5W	MD	
Domestic	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	36	5N	5W	MD	
Irrigation	NE $\frac{1}{4}$ of SE $\frac{1}{4}$					35
	NW $\frac{1}{4}$ of SE $\frac{1}{4}$					35
	SW $\frac{1}{4}$ of SE $\frac{1}{4}$					25
	SE $\frac{1}{4}$ of SE $\frac{1}{4}$					35
					TOTAL	130

* projected

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 40 acre-feet per annum to be collected from November 1 of each year to April 30 of the succeeding year. Permittee shall bypass all flows in the Unnamed Stream tributary to Huichica Creek (Point of Diversion No. 1) and in Huichica Creek (Point of Diversion No. 2) from May 1 through November 1 of each year.

(0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(000005I)

The maximum rate of diversion to offstream storage shall not exceed 2 cubic feet per second.

(000005J)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Construction work shall be prosecuted with reasonable diligence and shall be completed by December 31, 2001.

(0000008)

8. Complete application of the water to the authorized use shall be made by December 31, 2004.

(0000009)

9. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued.

(0000010)

10. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

11. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust. (0000012)

12. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

13. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

14. For the purpose of determining the amount of water diverted and used under this permit, permittee shall install and properly maintain: 1) a staff gage in the reservoir, and 2) a device capable of measuring instantaneous rate of diversion to offstream storage from Point of Diversion No. 2 on Huichica Creek. All facilities are to be satisfactory to the State Water Resources Control Board. Permittee shall

record the staff gage and measuring device readings on or about October 15 of each year. Such readings shall be presented to the State Water Resources Control Board with the next progress report submitted to the State Water Resources Control Board by permittee.

Permittee shall allow a designated representative of Buena Vista Winery and Beckstoffer Vineyard V, reasonable access to the reservoir and diversion facilities for the purpose of verifying staff gage and meter readings and determining water levels in the reservoir.

(0100047)
(0070047)

15. For the protection of fish and wildlife in Huichica Creek, permittee shall during the period:

- a) from November 1 through November 30, bypass a minimum of 2 cubic feet per second;
- b) from December 1 through February 29, bypass a minimum of 10 cubic feet per second; and
- c) from March 1 through April 30 bypass a minimum of 2 cubic feet per second.

Said bypasses pertain to Huichica Creek and permittee shall bypass the total stream flows at both points of diversion whenever flow in Huichica Creek is less than said bypass flows.

To ensure compliance with this condition, by June 1 of each year permittee shall file a report with the Chief, Division of Water Rights, containing the following information:

- a) dates during the previous period of November 1 through April 30 when water was diverted at Points of Diversion No. 1 and No. 2; and
- b) flows measured in Huichica Creek under this permit during the same dates when water was diverted at Points of Diversion No. 1 and No. 2.

(0140060)

16. No water shall be diverted under this permit until permittee has installed a device at Duhig Road Bridge or other downstream location, satisfactory to the State Water Resources Control Board, which is capable of measuring the bypass flows required by the conditions of this permit. Said measuring device shall be properly maintained.

(0060062)

17. In accordance with Section 1601, 1603, and Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted under this permit until permittee has entered into a stream alteration agreement with the California Department of Fish and Game and/or the Department has determined that measures to protect fish and the California freshwater shrimp (*Syncaris pacifica*) have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the permittee.

(0000063)

18. Permittee shall install and maintain a screening device, satisfactory to the California Department of Fish and Game and the U.S. Fish and Wildlife Service, to screen intake Diversion No. 2 on Huichica Creek. Said intake structure shall not increase bank erosion and must be installed at an elevation above the streambed where no water pumping will be possible during normal low spring and winter outflows. No California freshwater shrimp may be taken for any reason, including by impingement against the intake screen.

(0400500)

19. Permittee shall cooperate with the Napa County Resource Conservation District (NCRCD) in carrying out the Natural Resource Protection and Enhancement Plan for the Huichica Creek Watershed in accordance with NCRCD's May 1993 document entitled: *Huichica Creek Watershed: Natural Resource Protection and Enhancement Plan*, or any appropriate amendments thereto. A copy of this document is on file with the State Water Resources Control Board.

(0400500)

20. For the protection of riparian habitat and for stream bank stabilization, permittee shall establish and maintain a minimum setback of 30 feet along Huichica Creek, measured from the top of the bank on both sides of the creek, as depicted in the setback map received by the State Water Resources Control Board on August 26, 1996. No land disturbance activity shall occur within the designated setback area, including, but not limited to, clearing of native vegetation, grading, roads, fencing, storage areas, livestock grazing or watering, and new vineyard, with the exception of required maintenance of the existing access roads and the existing bridge across Huichica Creek near the south property line. (0400500)

21. To minimize the potential for erosion and resulting impacts on downstream fish and wildlife habitat, permittee shall, prior to any grading, obtain the required Napa County grading permit. Prior to any grading on the slopes greater than 5%, permittee shall submit to the Chief of the Division of Water Rights, State Water Resources Control Board, an Erosion Control Plan approved by the County of Napa. Requirements of the approved document shall be consistently applied over the entire Place of Use as defined within this permit. (0400500)

22. For the protection of fish and wildlife and to control excessive erosion, permittee shall plant a minimum of one tree and two shrubs for every 15 feet of shoreline around Madonna Reservoir as measured at the high water mark. Such trees and shrubs must be consistent with those found within the area and shall be approved by the California Department of Fish and Game prior to furnishing and planting by permittee. Trees and shrubs shall be of at least 5 gallon size and one gallon size respectively, and shall be planted within 100 yards of the shoreline. The trees shall be planted within one year from the date of permit issuance pursuant to the subject application, and shall be maintained such that 75% of the trees will have survived after 3 years. Trees may be planted in groves to maximize wildlife benefits. Cattails and bulrushes, if established naturally, shall be retained by permittee along the perimeter of the reservoir to provide wildlife habitat and bank stabilization.

After completion of the tree planting program, photo documentation showing the trees and the reservoir shall be submitted to the Chief of the Division of Water Rights. (0400500)

23. To ensure structural stability at the point of diversion and to prevent potential erosion and downstream siltation, storage of water under this permit shall not begin until the County Engineer, the United States Soil Conservation Service, or a civil engineer registered by the State of California has approved the plans and specifications for the dam, or has otherwise certified as to the safety of the dam, and any modification, reconstruction, or enlargement of the dam is under the direction of said party. (036K001)

24. This permit is specifically subject to the prior rights of Buena Vista Winery (Applications 23240 and 24278) and Beckstoffer Vineyard V (Application 25630) and all successors in interest of said rights. (0160800)

25. Should Buena Vista Winery and/or Beckstoffer Vineyard V be unable to pump from Huichica Creek because of insufficient flows, permittee shall, upon demand by either party, cease diversion until such time as flows are sufficient for all three diverters or the storage rights of Buena Vista Winery and Beckstoffer Vineyard V have been fulfilled. (0350900)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: November 22, 1996

STATE WATER RESOURCES CONTROL BOARD

Roger Schuman
TO: Chief, Division of Water Rights